

A Wider World

Youth, Privacy, and Social Networking Technologies

By Tracy Mitrano

Remember the Communications Decency Act of the 1990s? This law sought to protect youth from legal adult pornography, but its language and imprecise implementation so overreached its goal that when the law was passed, a federal court granted an injunction that lasted until the Supreme Court determined that many of the act's provisions were an unconstitutional violation of the First Amendment.¹ History may be repeating itself. At the time of this writing, the House of Representatives has passed H.R. 5319, a bill with the intent of protecting children from online predators but with the effect of blocking all social networking technologies for recipients of universal service support for schools and libraries.²

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Technologists in higher education need to take a leading role in discussions regarding this and similar laws. Implicitly anti-technology in spirit, such laws establish dangerous precedents that could be used to restrict creativity, technological advancements, and free speech. The academic research mission requires an open environment to flourish, and the academic teaching mission obligates those of us in higher education to spark ethical thinking and to inculcate the appropriate use of new technologies among all of our constituents, especially students. There is no better place to begin those lessons than in our own institutions and no more effective means than through institutional policy. Depending on how the law and technology, social norms, and the market shape social networking technologies in the very near future, higher education may also choose to develop its own applications and architectures to ensure effective communications within its communities, privacy of personally identifiable information, ownership of posted material as a matter of policy, and sound technical security without the distractions of advertising and commercial manipulations for profit.

Early Years and Contemporary Examples

Early forms of social networking technologies included applications such as online multiplayer games, bulletin boards, news groups, mailing lists, and dating services. Even if now only ten or fifteen years old, these applications provide a history that forms a relevant backdrop to newer varieties such as MySpace.com, Friendster, and Facebook. From the very beginning of the early applications, something was different. People had the opportunity to burst out of their parochial communities and make connections around the world. Basket-weavers and metallurgists and other hobby-seekers expanded their expertise, interests, and sometimes even professions while everything from dating sites to interest groups to social and political movements blossomed.

Of course, abuses occurred. In 1996, a young woman in New York City, on a first date with a new online acquaintance, went to his apartment and later sued for sexual

assault after the date attempted to demonstrate some of their online fantasies.³ To complicate the story even more, an appellate court later overturned the conviction, and the defendant is suing for wrongful imprisonment. In another case, a male therapist posed as a disabled woman and heartbreakingly deceived a flock of online friends and sympathizers.⁴ In addition to deception, fraud became a significant concern. In order to maintain its business model, eBay created elaborate means to guard against misrepresentations and theft (<http://pages.ebay.com/securitycenter/>). The openness of network protocols and the insecurity of software engendered a boom in “identity theft.”

Privacy too was an early concern. Minimally, Congress passed the Children’s Online Privacy Protection Act (COPPA) in 1998, which controls the acquisition of personally identifiable information from persons thirteen and under on the Internet by requiring adult permission (<http://www.ftc.gov/ogc/coppa1.htm>). In addition, the Federal Trade Commission (FTC) requires commercial Web sites and any other Web sites that collect personally identifiable information to publish a privacy policy, although the FTC requires no specifics. Thus, a privacy policy meets the requirement even if it states that the owner of the site will sell the personally identifiable information to the lowest bidder. Calls for more substantive privacy policies, ones that would lean on the side of protecting information, have gathered little traction in Congress.

Newer applications have replayed the early online scenarios. When MySpace.com emerged in 2003, it brought millions of users—in this case, mostly young users—into wider community configurations. Online, perhaps in a manner no less inhibited than in the halls of most junior high schools, adolescents demonstrated stunning self-reflection as well as

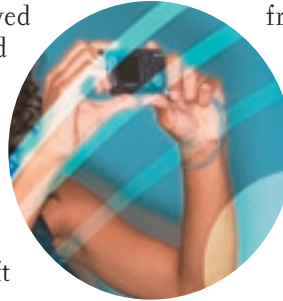
original insights about peers, politics, and society. They also displayed shockingly outrageous behavior including forbidden fruits such as alcohol or taboos such as sex. The media responded by documenting the alleged “rise and fall” of the medium. Stories discussed everything

from the publisher Rupert Murdoch, who acquired the site in 2005 and gave MySpace its own particular cachet, to the addictive qualities of the site and its predicted demise among teenagers, ironically because its popularity caused the site to lose its “cool.” Recently, Google has also become involved by winning a bidding war to sell services and advertising on MySpace.⁵

National Public Radio featured the issue of online identity in at least two “Talk of the Nation” programs, with callers reporting how shocking it was to “Google”

themselves and find all kinds of “private” information. Even more shocking for some callers was finding online pictures of their early-teen daughters posing, alluringly, as much older. One man who called in to the show announced that he was a lawyer and then asked for guidance on how to manage the discovery of his twelve-year-old daughter’s alluring photographs on a MySpace page. Jeffrey Rosen, professor at George Washington University Law School and a panelist on the show, shared his concern and joked with the caller by saying that as lawyers, they both knew the law offered almost no help at all.⁶ Of course, this was months before H.R. 5319 emerged on the legal stage, and it is not at all clear that either of these thoughtful people would want to outlaw the technologies altogether to whole groups of users.

Interactive online gaming, especially popular among boys, proves just as challenging by offering both creative fun and dangerous liaisons. Imagine my response when, one Saturday evening, after my nine-year-old son, Sam, told me that he



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had just won a “race game,” he then announced: “This nice man online wants to know if it is okay with you if I give him my name and address so he can send me my prize!”

Lessig’s Four Factors

Lawrence Lessig’s four factors of the Internet—technology, the market, the law, and social norms—offer a means to analyze this medium.⁷ Technology and the market have obviously changed dramatically over the years, offering forms of communication and types of devices virtually unimaginable even a generation ago. The law steps in as the character who is most frequently called onstage but who beats others over the head when it comes to content protected by intellectual property or by primitive wide sweeps—such as H.R. 5319—that block the technologies completely. Current law and many market distribution models have yet to catch up to technologies in narrowly tailored and appropriate ways to fairly balance incentive with innovation, free expression, and appropriate use. Lastly, in this complicated mix of factors, social norms play perhaps the most important role. Many observers of the Internet cite users as the original “architects” of the medium.⁸ No doubt, as we shall see below, users continue to exert an extraordinary influence, especially in social networking technologies, by providing signals to lawmakers, businesspeople, and even technologists about what they want and how they want to use it.

But let’s begin with the law. To say that the law plays catch-up is not to suggest that there are no necessary legal boundaries. COPPA required the man who was interacting with my son online to obtain my permission before Sam could give him any personally identifiable information. That narrowly tailored law served an important purpose by prompting adult supervision. Even if

we assume the worse—that the “nice man” was a sexual predator using the law to ferret out unsupervised or vulnerable children—it still works to a child’s and his or her parents’ advantage. Notably, COPPA also does not go to the extreme of outlawing online games. And if misused for criminal purposes, the law might supply important evidence in an investigation and prosecution of criminal activity.

In a networked world, the previous generation’s advice to children—“Don’t talk to strangers”—no longer makes any sense. Talking to strangers is part of the magic of the Internet. However, parents do need to talk to their children. Maintaining communication about what children’s online activities are and with whom they are networking, and establishing rules regarding the disclosure of personal information, are key to providing a context in which children can reap the benefits of new technologies while still learning how to protect themselves.⁹ In my follow-up discussion with Sam, he showed me how



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for the purpose of playing online games, he is a twelve-year-old boy from Los Angeles named Ryan! He said one other kid asked him to name some streets in L.A. and when he couldn’t, all the kids on the online game just laughed and continued with the activity. There probably wasn’t a child on that game who did not provide false information. With proper guidance, even young children can develop the skills to navigate the Internet safely.

So after this incident with Sam, I asked my fourteen-year-old son, Nikko: “Do you have a page on MySpace?” He replied: “I didn’t put one up, but Kayla made one up for me.” After my first response (“Kayla, who’s Kayla?!”) and after my possessive mother instincts cooled down, Nikko acted as my Virgil to the virtual world. It turns out that making up pages about other people is a common practice in my son’s middle-school set. And it is all a spoof. They make up names,

identities, and interests. Just like clothes, they try on a new attribute or someone else’s to see how it fits, to get attention, or simply to be more outrageous than the last person who posted something. Some of the postings are mean, some are teasing, many are funny. Sexually suggestive, although not explicit, most of the postings traffic in the psychology of personality (notably, however, not ethnic) stereotyping such as “geeks,” “gaming lords,” “good girls,” and my favorite (says she, sardonically): “hotties.” Nikko recognizes that the practice is goofy, and he enjoys the attention. It also turns out that no one is identifiable to an outsider. A user has to know the code of the spoof to know to whom any page or posting pertains. Intelligence, budding sexuality, and personal identity development signals bubble forth from these pages. What impressed me the most was how clever they were about preserving their privacy. Indeed, they had turned being anonymous to strangers into part of their game.

Technology does indeed create new social norms. It can also be the vehicle for traditional adolescent expression. James Garbarino has long noted that the creation of a secret life marks healthy adolescent development: it is the means by which children separate from their parents on their journey toward adulthood.¹⁰ That secret life becomes dangerous only when combined with toxic elements such as severe psychological abnormalities or extreme antisocial behavior. Technology can enhance the secrecy, especially when parents remain uninformed or fail to articulate clear values and enforceable rules. Proper modeling by parents is also important, for example in the area of file sharing and copyright infringement. A parent who demonstrates restraint in the face of the gap that exists between the law and technology provides implicit advice that one should be cautious when using new technologies. That caution might make all the difference in a moment such as when Sam chose to ask me about the “nice man” rather than simply indulging his very understandable desire to get a prize.

Quashing technological advances is never the solution. I genuinely enjoy watching my children dive into new

technologies such as iPods and online games or my students demonstrating new uses of search tools or network applications. New technologies alarm us for very real reasons but can and must be addressed in ways that do not crush innovation and fun. When use of the Internet led to an explosion in plagiarism, a number of companies turned back to technology to address the problem: Turnitin is a prime example. Notably, policy played a role in that correction too, such as the implied copyright permissions that some schools secured for the use of Turnitin.¹¹ Students' use of Instant Messenger (IM) during exams to exchange answers, in violation of academic integrity codes, resulted in some institutions prohibiting networking devices during exam periods. In part to avoid these problems, I no longer give in-class exams or generic paper assignments; instead, I require take-home exams e-mailed to me on topics tailored to specific course material. The beauty for me is that the exams are typed, legible, and time-stamped! The advantage to students is that they have time to think through their answers and, because the assignment is tailored to class material, to integrate readings, discussion, and independent thinking.

Facebook

Into this exciting but unstable space stepped Facebook in February 2004. Hardly the newest social networking technology, Facebook is nonetheless the most significant one to higher education because of its original focus on the college/university market. The issues that it raises—personal safety, monitoring for content, and the relationship between institutional missions and a new generation's expectations of privacy—speak meaningfully to larger questions about the interplay among the technological, social, legal, and market factors shaping not only the Internet but American society overall.

Law, market, and social norm factors demonstrate that the technology fits a niche. The founders of Facebook currently face potential litigation from plaintiffs who claim the original concept and allege broken contractual relations and stolen trade secrets. Much is at stake,

because Mark Zuckerberg, founder and CEO, is unwilling to sell the site even though it is currently valued at many millions of dollars. Money pours in from advertisers seeking the Facebook market, and if anyone needed any more evidence of its profitability, Microsoft has negotiated a role as exclusive sponsor of Facebook advertising.¹²

As for social norms, with a technology that is geared to youth but that parents can observe and even participate in, generational issues will inevitably pop up, but in addition, the medium provides a way to expose what otherwise might remain hidden behind a teenager's closed bedroom door or monosyllabic responses to parents' questions. The first reaction of many adults who log on to Facebook is often: "They put that kind of stuff online? Depictions of decadent drinking, drugs, sex, and rock-n-roll!" But those kinds of activities have occurred in colleges for years. It is the open display to a million potential eyes that is shocking and alarming to many adults. Administrators at the University of New Mexico banned the application and blocked it at the port. Judicial administration at Syracuse University disciplined a couple of students for extremely unflattering statements about a professor. Coaches at Northwestern University prohibited varsity athletes from using Facebook for fear that they would tarnish reputations with depictions unbecoming to university athletes. Freshman orientation at Louisiana Tech and the University of Louisiana at Monroe includes sessions to warn students about the potential dangers of social networking sites such as MySpace, Facebook, Xanga, and LiveJournal. Many other institutions also include information about social networking technologies in their orientation materials.¹³ Residence life forums have popped up across campuses to discuss how advisors might counsel

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their charges toward thoughtful, prudent use of the medium. When I attended a forum on this subject at Cornell in February 2006, what students really wanted to know was whether any of us had looked at their pages.

After the alarm came revelations and even humor. The University of New Mexico blocked the site because of policy violations related to spamming, not because of the actual intended use of the application. At numerous institutions, administrators, including presidents, joined in the game and set up their own pages; former Cornell president Jeffrey S. Lehman, it turned out, had thousands of "friends." Most hilarious

were the reverse psychological pranks, such as the "big bash" beer party widely advertised on Facebook; administrators crashed the party only to find cupcakes with the word "beer" frosted on them.¹⁴

Still, academic administrators continue to seek further understanding. The National Association of College and University Attorneys included a Facebook session at its summer 2006 conference, with a presentation by Steve MacDonald, a veteran observer of law, ethics, and the Internet. Two days later, MacDonald repeated his presentation at the annual summer seminar of the EDUCAUSE/Cornell Institute for Computer Policy and Law.

What are the legal, policy, and educational considerations associated with Facebook? The site itself fits clearly in the bull's-eye of First Amendment protections, so state institutions might want to be particularly careful not to block Facebook on any grounds that can be construed as pertaining to free speech. Protection against government restrictions does not alleviate users of potential torts, however; to the degree that material posted about other people might place them in "false light," "invade their privacy," or if they are famous, "misappropriate their likeness,"

the person who posted the material may face civil litigation. Defamation or libel is also a possibility, even though U.S. law notably favors defendants. Forgery, even for fun, may also be considered a potential criminal action, especially if it results in personal or financial harm to the alleged victim. In the area of intellectual property, users should be cautious about using institutional or commercial logos, which could be a potential copyright or trademark violation.

Policy considerations root back to the institution and intersect with information technology and human resources. It would be prudent for institutions to let students know that administrators and/or faculty either can or will routinely access the site and actively monitor it for behavior inconsistent with the school's values and mission. Particular organizations within an institution, such as athletic associations and varsity teams whose coaches want to foster a positive image, might establish their own rules. The other side of the policy coin concerns students who are employees of the institution. In the name of full disclosure, institutions should make clear to students whether they will or will not scan the site for the purposes of evaluating candidates for positions, especially those that deal most directly with other students or the school's mission—positions such as resident advisors or peer counselors.

Providing some basic information about how the site operates might also be helpful, especially to younger users without extensive Internet experience. For example, they need to know that as of late September 2006, anyone with a valid e-mail address can access the site, although individual's postings are open only to "friends" and to specific geographic networks that map to physical space if the individual chooses to join them. Given how broadly the functionality of "friends" applies, personal safety issues still emerge,

especially since stalkers often begin as "friends" (even in physical space, without the benefit of new technologies). A suggestion that an individual not post online any information that they would not display in physical space is at least a start at getting younger people to think about the broader world of visibility in which they are living online.¹⁵ Being accessible to their friends on a 24/7 basis must be balanced against exposure in a larger universe of people they don't know and have no reason to trust. Once users become aware of the issue of personal safety, it is

easier to introduce other concerns such as exhibitionism, voyeurism, and personal "branding."

Another concern for institutional administrators arises when the age-old anxiety about new roommates meets twenty-first-century social networking technologies. Residence hall staff are spending a considerably larger amount of time rearranging incoming freshmen than they did the year before. Not surprisingly, at least one institution does not allow incoming freshmen to use the site, thus avoiding the administrative burden of negotiating the requests for roommate changes.

Other schools have placed a moratorium on roommate change requests, largely inspired by first Facebook impressions, until after a required period of time spent living together.¹⁶

Perhaps the most important institutional policy considerations concerning Facebook involve having users take note of the Facebook policy (<http://www.facebook.com/policy.php>). Surprise! Facebook "owns" everything on its site. Who knows what this statement actually means until it is tested by specific facts in a court of law, but at the very least, I would advise users not to post their memoir or the next great American novel. Facebook also reserves the right to remove material, which is probably boilerplate legalese, but a user might want to know what the

due process for removal is before posting something genuinely meaningful. If one uses Facebook to respond to a public claim, could his or her voice be silenced by poor process? In addition, Facebook policy states that the site is not liable for content. Section 230 of the Communications Decency Act grants Internet Service Providers (ISPs) immunity from liability for common torts such as defamation, but Facebook is not an ISP. Thus, Facebook makes itself immune simply by decree. Finally, even Facebook has security challenges.¹⁷

The legal and policy landscape of Facebook unfolds into educational moments. The vast majority of colleges and universities will create no extra policy or process concerning Facebook. To thus say to students, "We trust you enough not to limit your online behavior," is to imply, "We believe you are old enough now to act responsibly with a computer and a network connection." But if it is true that about 85 percent of all college-age students use Facebook (as some sources state), then colleges and universities need to be sure that students know the consequences, unintended and otherwise.¹⁸ Search engines cache sites. One day's goof could be years of exposure on Google if left unattended. Or if a student pigeonholes himself or herself into a stereotype, viewers might come to think of that person in exactly those terms. Indeed, portrayals of oneself could turn into self-fulfilling prophecies. At the extreme end of this warning is the very sad case of the Cornell second-semester freshman who wrote an overabundance of alcohol-related postings on his site—including a final posting that said he was going out to get drunk—and who then died from alcohol poisoning while visiting friends at the University of Virginia. Obviously, the Facebook postings did not determine this student's fate, but the reinforcement that public exposure offers one's own version of himself or herself may have exacerbated this young man's struggle with alcohol.

Finally, it is worth observing that the trends in higher education regarding Facebook place the onus on the *student* users. Is there any institution willing to declare a policy against *administrators'* use

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of the application? Would the rationale for such a policy be grounded in the recognition that Facebook is largely a recreational site for which the university has no liability coverage (unlike, for example, a gym or climbing wall), or that it is none of administrators' business to be observing students in their free time, or that the purpose of the site was originally for students rather than faculty or staff? Why haven't institutions that tout freedom for students, particularly those institutions that do not claim supervision as a part of their mission, declared such a policy? Do those of us in higher education administration believe too much in our own freedom over and above students' privacy? Is there something titillating and voyeuristic that we don't want to give up? Do we believe that we must be involved in order to provide guidance to students in an updated kind of *in loco parentis*? Or is Facebook simply too much plain old fun for us also to forgo?

What we do know is that even youth have a threshold for privacy. In addition to the already existing bulletin boards and "poking" functionalities, in September 2006 Facebook pushed out a new functionality that alerted "friends" to every change on an individual friend's page. In the immediate aftermath of this event, one student in my "Culture, Law, and Politics of the Internet" class noted: "I don't mind being available, but I don't want to be announced." The element of surprise brought a sharp response of "Too much information!"¹⁹ Opt-out controls for the release of personally identifiable information on the site also led a number of users to recognize that Facebook policy otherwise allows the site owners to sell that information.

At least one student took note of this matter and wrote to ask me whether such a practice is legal. The answer is yes, which speaks to the larger question of absence of more protection in U.S. privacy laws, especially in an environment where individuals, youth especially, seem prone to exposing themselves with abandon. Notably, though, not all youth do so. In a Facebook forum sponsored by Cornell University's residential life department, one student reported that, encouraged for professional reasons to create a site

for herself, she did so but later decided to block it. She explained: "I didn't like the idea of people looking at me when I wasn't there." Unfortunately, without more effort, the best she could do to protect herself from exposure was to "block" her site: the function to remove material does not automatically exist. Even though she has now blocked the site, unless she goes back into the site and checks the opt-out selection regarding her personally identifiable information, that information is still available for trade or sale by the site owners.

Yet no discussion of Facebook would be complete without a celebration of this "cool new tool." Legal, policy, and educational considerations are like the written test for driving: they lay out the ground rules for what should be a lifetime of enjoyable freedom of use. When I was in college, students spent hours poring over static, hard-copy "Facebooks," commenting on other students' good looks or goofy hairdos. We would imagine what they were like just by looking at their photos and learning where they came from and what they intended to study. Today's youth are doing the same things, but with new functionalities. Another of my students noted: "Facebook is my guilty pleasure." When I asked her the crime for which she was guilty, she answered that she was using time when she thought she should be studying. Although time management is undoubtedly an important skill for students to develop, perhaps youth should be absolved of their alleged sin. This student, for example, was quite far from home. The more I talked with her, the more I realized that Facebook was helping her to stay in touch with high school friends she missed very much.

It is fitting that technology should serve age-old needs at the same time that it sets a new pace. The world is both smaller and larger for youth today. The world is

smaller because of rapid transportation, telecommunications, the emergence of an international culture, and not least, the Internet. The world is larger in the sense that many more youngsters grow up thinking in broader, international terms—in ways that their parents, a generation ago, did not. Suites of technologies offer an expanded vision. There are so many new people to meet and so much more information to share: politics, penchants, entertainment, photographs, music, and videos. Facebook offers a dynamic way for a young adult to play with his or her

emerging personality. Social networking technologies not only have replaced for all time the hard-copy world of "Facebooks" but also are poised to displace other current technologies, such as e-mail or IM programs (as we know them now).²⁰ Facebook is disruptive, popular, and important because it intersects with all that is edgy about innovative networking technologies deployed to full social advantage. It is also very clearly not the wave of the future; rather, it is what is happening right now among youth, in colleges and universities, and it is setting the current standard of communication for both personal and professional use.

Conclusion

The night before my son Nikko went off to camp, I told him to keep three principles in mind: maintain personal safety; explore all the opportunities the camp had to offer; and remember the golden rule—treat others how you want to be treated. I know that criminals exist, sometimes even in the midst of our most trusted acquaintances. But I pray that I have nurtured my children's instincts sufficiently that they know whom to trust and how to react to actual threats. By the same token, I hope I have given them the developmental means to engage new worlds, both physical and virtual, with courage and excitement.

It occurs to me now that the essence



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of this message is as relevant to students using Facebook, other social networking technologies, and the Internet as it is for my boy attending summer camp. Might not the same three principles serve national law and policy on communications technologies as well? Criminals will always appropriate technology for their misbegotten purposes. That pattern, as old as civilization itself, is no reason to quash innovation. Why deprive law-abiding people of socially advantageous uses of technology? Law enforcement must get smarter, on a continuing basis, about investigating the criminal uses of technology, but no new legislation may even be needed.²¹ Members of Congress would do well to read Judge Frank Easterbrook's famous article on the "law of the horse" theory, which suggests that existing laws are sufficient to address cyberspace. Though his is an extreme position adopted by few today in light of other legal and national policy issues such as ISP liability, regulation of the Internet, and "net neutrality," it is nonetheless a refreshing reminder in light of proposed legislation such as H.R. 5319. The federal government would gain so much more by promoting appropriate use rather than banning technology, especially in a world made "flat" by it.

Given my interest in this area and Facebook in particular, people frequently ask me why I don't create a page. The answer is simple: I don't want someone else to own my or Cornell's intellectual property or to collect, hold, or sell my personally identifiable information, nor do I want to be beholden to someone else's commercial interests. I eagerly await the day when there is a homegrown higher education application that will address those policy concerns in keeping with the spirit of a not-for-profit institution. And if we build it, commercial entities may come around to more fair policies, ones in keeping with the needs of users not only in the United States but also in the rest of the developed world, much of which already functions with greater legal privacy protection for

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individuals than U.S. law provides. Still, I fully recognize that youth are onto something with their use of social networking technologies. Higher education too should embrace these technologies, in pursuit of the academic mission. Social networking technologies speak to all that is fresh and innovative in research, teaching and learning, and outreach. The younger generation's perspective on the Internet generally and on social networking technologies in particular thus might be just the thing, seasoned with a little dash of the previous generation's wisdom and guidance, that higher education needs now. *e*

Notes

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